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August 29, 2019

Chief James McElvain
Vancouver Police Department
PO Box 1995
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RE: Officer Involved Shooting

Incident date: 2-19-2019
Involved Officer: Vancouver Police Corporal Roger Evans
Decedent: Clayton Joseph
CCSO report number 19-1768
VPD report numbers 2319-2916 and 2319-2917
Date of final report received for this review: 8-22-2019 (autopsy report)

Chief McElvain:

Upon the request of your department, I have reviewed the above-referenced case. The Regional Major Crimes team conducted a thorough investigation in this case. All reports relevant to this case were collected and sent to the Prosecutor's Office for this review. Upon receipt and review of all reports and all documented evidence that was generated in the investigation of this case, I find Officer Evans acted lawfully.

FACTS

Clayton Joseph and his family moved from Micronesia to Vancouver where they lived in the Sterling Heights apartments. Clayton Joseph's brother's name is S.mate Joseph. S.mate's girlfriend's name is Neilyen. When this incident occurred, Clayton Joseph was 16 years old. Clayton's brother, S.mate, was 22 years old at the time of this incident.

On the night of February 19, 2019, S.mate Joseph, was engaged in a loud verbal and physical altercation with his girlfriend, Neilyen, at the Sterling Heights apartments in Vancouver. Witnesses stated S.mate was highly intoxicated and very upset and angry with Neilyen. S.mate's younger brother, Clayton Joseph, was involved in the altercation. During the altercation, Clayton Joseph threatened witnesses at the apartment complex with a knife. One of the witnesses, Julio Garcia Ruiz, stated Clayton Joseph produced a knife, cursed at him, and confronted him about calling the police. Julio stated that Clayton then swung the knife at Julio and his son, Eric. Julio stated he believed Clayton was attempting to stab them and that he and his son Eric retreated. Eric also stated he believed Clayton was trying to stab him and that he

had to jump back quickly to avoid being stabbed. Eric stated if he had not jumped back quickly he would have been stabbed.

The scene at the Sterling Heights apartments was hectic. Multiple people called 911 to report their observations and to give descriptions of the people involved. Police dispatch relayed information as they were receiving it to the responding officers.

Responding officers were advised that two males and one female were involved in an altercation. Dispatch advised officers that 911 callers were reporting one of the males had threatened the reporting parties with a knife. Based on 911 reports, dispatch gave general physical descriptions to responding officers. One caller described the male with the knife as a Hispanic male in his early 20's approximately 5'6" with a small build wearing a red jacket and jeans. Another caller described the second involved male was a 16-17 year old male. The responding officers had only general physical descriptions of the individuals involved in the event.

As officers were responding to the call, information about the incident was transmitted to the officers in two ways. The responding officers received information over the radio and via the computer screens in their vehicles. Information about the incident was being relayed to the officers as they drove to the scene. The information made it clear to the officers that the incident was still occurring as the officers were on their way to the scene.

Vancouver Police officers Junker, Carlow and Bibens arrived on the scene before Officer Evans arrived. These three officers arrived in their marked patrol vehicles and they were in uniform. Officers Junker, Carlow and Bibens contacted S.mate at the scene on SE 10th street. S.mate was intoxicated and very agitated when officers contacted him. The officers attempted to order S.mate to get on the ground. He did not comply with verbal commands to get on the ground. S.mate yelled and made the officers think he may assault them. The officers on the scene were fully focused on their contact with S.mate as Officer Evans arrived on the scene.

OFFICER EVANS STATEMENT

Officer Evans was interviewed on February 22, 2019 as part of the investigation in this case. The interview was conducted by Clark County Sheriff Department Detective Fred Neiman and Battle Ground Police Department Sergeant Jason Perdue. The interview was recorded and transcribed as part of this investigation. Officer Evans stated in his interview that he drove his vehicle toward the officers who were contacting S.mate with the intent of helping those officers. Officer Evans was driving a marked patrol vehicle and Officer Evans was in full police uniform.

As Officer Evans approached in his vehicle, he observed a male, later identified as Clayton Joseph, rapidly exit a gate from the apartment complex. Officer Evans observed Clayton begin to walk on the sidewalk toward the other officers who were contacting S.mate. Officer Evans observed Clayton was walking quickly toward the other officers and that the other officers had their backs to Clayton. Officer Evans stated that while it was dark out, he could see because the area was lit by street lights and ambient light from the apartment complex. Officer Evans stated in his interview that he believed the male he was observing was the person who had been described by dispatch as a Hispanic male in his early 20's who was armed with a knife. Officer Evans was basing his opinion about who Clayton Joseph was only from the information he had received through police dispatch on his way to the scene. Officer Evans had no prior contact with Clayton Joseph before this incident.

Officer Evans stated the male, Clayton Joseph, was walking in a determined manner toward the other officers. Officer Evans stopped his vehicle, got out, and ordered Clayton Joseph to stop. Officer Evans drew his gun as he exited his vehicle. Officer Evans stated he drew his weapon because he believed the male, Clayton Joseph, was armed with a knife, had just assaulted witnesses with the knife, and the male was quickly approaching the other officers who had their backs turned. Scene analysis confirmed Clayton Joseph was approximately 30 feet from the other officers at this point.

Officer Evans stated as he exited his vehicle he immediately gave the verbal command "Police. Stop. Show me your hands." Officer Evans stated that Clayton responded by stopping and facing him. Officer Evans stated Clayton was facing him with his left side and Officer Evans could not initially see Clayton's right hand. Officer Evans stated Clayton paused, took a breath, and brought his right hand forward revealing a knife in his right hand. Officer Evans stated he and Clayton Joseph were from 12 to 15 feet apart. Officer Evans stated as soon as he saw the knife he yelled, "Drop the knife". Officer Evans stated Clayton held the knife in his fist and Clayton raised the knife. Officer Evans stated the knife appeared to have a 4 to 5 inch blade and Clayton was holding the knife in an overhead stabbing manner. Officer Evans stated as Clayton raised the knife in the stabbing motion, Clayton stepped toward Officer Evans. Officer Evans described Clayton stepping toward him in a sudden aggressive manner with the knife raised in a stabbing posture. Officer Evans stated he was sure he was able to yell, "Drop the knife" at least one time. Officer Evans stated Clayton did not drop the knife. Officer Evans stated when Clayton did not drop the knife and he began to advance toward him with the knife raised, Officer Evans fired one round at Clayton Joseph. Officer Evans stated when he fired, Clayton fell to the ground.

Officer Evans stated in his interview in this case that he fired his weapon because he believed he was about to be attacked by a male armed with a knife. Officer Evans was clear in his interview that he felt he had no reasonable option other than to fire his weapon at the moment he did. Officer Evans stated he believed if he did not fire, he would be stabbed and that he could likely have sustained a life-threatening injury.

In the investigative interview of Officer Evans in this case, Detectives asked Officer Evans questions about possible options other than the use of deadly force in this case. Officer Evans was asked about the possibility of using a taser. Officer Evans explained in his interview that when he saw Clayton Joseph, he believed Clayton was the person who was described in the 911 calls as an early 20s Hispanic male armed with a knife. Officer Evans stated he was aware callers reported the suspect had threatened people with the knife and when he first saw Clayton, he was quickly approaching his fellow officers who had their backs to Clayton. Officer Evans explained that with this information, he determined it was appropriate to draw his firearm when he exited his vehicle. Officer Evans stated he did not attempt to use a taser in this incident because he was the only officer in contact with a person armed with a knife. Officer Evans stated he has been trained not to attempt to use a taser when confronted by a person armed with a knife unless another officer is present to provide cover because tasers do not always succeed in stopping armed individuals. This law enforcement procedure regarding the use of a taser was confirmed by the investigating detectives in this case.

Detectives also asked Officer Evans whether backing up or retreating would have been a viable option in this case. Officer Evans stated he did not feel he could have backed up when Clayton advanced with the knife because backing up would have caused Officer Evans to back up into the roadway. Officer Evans stated turning and running would not have been a viable option in

this situation. Officer Evans further stated he was aware of the fact that the vest he was wearing was designed to stop bullets from penetrating, however the vest was not designed to stop a stabbing knife. Officer Evans stated he did not believe he had any option other than to fire his weapon in the instant Clayton Joseph was coming at him with the raised knife.

INTERVIEWS OF OTHER OFFICERS ON SCENE

Vancouver Police Officers Junker, Bibens and Carlow were interviewed as part of this OIS investigation. These interviews were conducted by members of the Clark County Major Crimes team. The interviews were recorded and transcribed. Officers Junker, Bibens and Carlow responded to the Sterling Heights apartments before Officer Evans arrived. These officers had access to the same information about the nature of the call as Officer Evans. Officers, Junker, Bibens and Carlow contacted Clayton Joseph's brother S.mate at the scene. These officers were focused on their contact with S.mate as Officer Evans arrived. Officers Junker, Bibens and Carlow all stated they were having significant difficulty with S.mate and they did not see Clayton Joseph approaching and they did not know Officer Evans was present. Each of the three officers stated they heard someone yelling, "Drop the knife" several times from behind them prior to hearing a gunshot. None of the three officers indicated they saw what was happening between Officer Evans and Clayton Joseph prior to the shooting. The Statements of Officers Junker, Bibens and Carlow were consistent with Officer Evans' statements as well as the documented physical evidence in this incident.

INCIDENT SCENE

The scene of this officer involved shooting was documented with photographs as well as a three dimensional (3D) laser scan. The 3D laser scan produced a detailed, to-scale diagram of the scene in this case. When the scene of this incident was examined, several items remained in place. Officer Evans' vehicle and Officer Junker's vehicle remained unmoved. A single 9mm shell casing was recovered near the front of Officers Evans' vehicle. The single 9mm shell casing recovered was found on the ground near where Officer Evans said he stood when he fired. The knife Clayton Joseph held was recovered on the ground next to where he fell. The knife was a sharp knife with a blade consistent with Officer Evans' description. The knife appears to be a kitchen steak type knife. Using the evidence collected at the scene, crime scene detectives were able to estimate a distance of approximately 15 feet between Officer Evans and Clayton Joseph at the time Officer Evans fired his weapon. This distance could have been a few feet less or more based on the diagraming of the evidence collected. The distance between Clayton Joseph and the officers on the scene who had their backs to him appears to have been approximately 30 feet. Analysis of evidence collected and diagramed at the scene of this case was consistent with Officer Evans' description of events.

AUTOPSY

The autopsy report indicates Clayton Joseph died as a result of a single gunshot wound to his chest. The report documents the gunshot entrance wound is on Clayton Joseph's upper left chest. The gunshot wound as documented in the autopsy report is consistent with the evidence collected at the scene of this incident as well as the statement given by Officer Evans. As part of the autopsy report a toxicology screen was performed. The toxicology report found no evidence of drugs or alcohol in Clayton Joseph's system.

CLAYTON JOSEPH PRIOR ASSAULTS WITH KNIFE

On October 12, 2018, Clayton Joseph threatened several people with a knife in a manner very similar to his actions on the night of this officer involved shooting incident. On October 12, 2018, Clayton Joseph approached two brothers, Christopher (17yr old) and Michael (23yr old), who were about to leave the Sterling Heights apartments on their bikes. According to the brothers, Clayton Joseph approached them without provocation, cursed at them and swung a knife at Michael two times. Michael stated he was able to deflect Clayton's swing with the knife and that he believed he would have been stabbed if he had not been successful in deflecting the swing. The brothers retreated from Clayton Joseph on their bikes and called 911 to report the incident.

After attempting to stab Michael, Clayton Joseph walked to Ellsworth Elementary school. There he assaulted a 14 year old boy by punching him and threatening him with the knife. Two maintenance workers intervened at the school. Clayton swung the knife at them but they were able to take him to the ground as the police arrived. The police reports from that incident indicate Clayton was highly intoxicated and that he committed the assaults because he was upset because his mother was with a man he did not like. Clayton indicated to the police that he was suicidal. The knife he used in the prior incident was the same type of knife he was armed with in the officer involved shooting incident. Each of the victims in the prior incident stated that although Clayton did not succeed in stabbing them, they felt he would have if they had not evaded his efforts.

As a result of this prior incident, Clayton Joseph was charged in Clark County Juvenile Court with two counts of Assault in the Second Degree with a deadly weapon. Clayton Joseph pleaded guilty to one count of Assault in the Second Degree with a deadly weapon and one count of Assault in the Fourth Degree. That case was pending a sentencing hearing in Juvenile Court when this officer involved shooting incident took place.

LEGAL STANDARD

Washington peace officers are authorized to justifiably use deadly force where probable cause exists to believe the suspect poses a threat of serious physical harm to themselves or to others. RCW 9A.16.040(2). In determining whether a person poses a "threat of serious physical harm," Washington law allows consideration of whether: (1) the suspect threatened an officer with a weapon or displayed a weapon in a manner that could reasonably be construed as threatening; or (2) there is probable cause to believe the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm. RCW 9A.16.040(2)(a)&(b).

In addition, Washington statutes in effect at the time of this incident require an officer's use of deadly force to be in good faith. RCW 9A.16.040(4). The good faith standard requires the officer's use of deadly force to meet an objective test. RCW 9A.16.040(4). The objective good faith test is met if a similarly situated reasonable officer, in light of all the facts, circumstances, and information known to the officer at the time, would have believed the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. RCW 9A.16.040(4)

Furthermore, Washington's statute authorizing an officer's use of force is subject to constitutional limits on the use of force. Police conduct is therefore further analyzed under a standard of objective reasonableness, from the point of view of officers on the scene, in light of

facts and circumstances confronting them, and allowing for the necessity of split-second decisions. *Graham v. Connor*, 490 U.W. 386, 396-97 (1989). The reasonableness of an officer's use of force depends on (1) the severity of the underlying offense, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest. *Id.*, at 396. The use of deadly force is objectively reasonable, and therefore justified, if there is probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others. *Tennessee v. Garner*, 471 W.S. 1, 11-12 (1985).

CONCLUSION

Officer Evans was clear in his interview that at the moment he fired his weapon, he believed Clayton Joseph was an adult male who had just threatened 911 callers with a knife and that Clayton Joseph was about to stab Officer Evans. The facts of this case indicate Officer Evans was reasonably and lawfully contacting a person he believed to be an armed suspect. Officer Evans had a very brief amount of time in the contact before he had to make the decision regarding use of deadly force. The evidence is clear that Officer Evans had no motive to bear animosity to Clayton Joseph. Officer Evans did not know Clayton Joseph was coming at him with the knife. The physical evidence in this case supports the facts as explained by Officer Evans. Clayton Joseph's actions in threatening witnesses with the knife minutes before Officer Evans contacted him and Clayton Joseph's action in assaulting people with a knife in October of 2018 very strongly corroborate the statement given by Officer Evans.

Clayton Joseph's conduct with respect to the prior incident in October of 2018 had no bearing on Officer Evans thought process in this officer involved shooting. While the facts of this prior case were not known to Officer Evans, the facts of the prior case are relevant here. Clayton Joseph's actions in the prior incident are very similar to the conduct he exhibited when he raised his knife in an apparent attempt to stab Officer Evans. The well-documented facts of Clayton Joseph's prior case certainly corroborate the facts of the current case as described by Officer Evans.

All evidence in this case supports a finding that Officer Evans actions meet the good faith standard of conduct as required by law. The evidence supports a finding that Officer Evans acted both subjectively and objectively in good faith.

Although the loss of Clayton Joseph's life was tragic, the conduct of Officer Evans was reasonable, justifiable and lawful in this case.

Dated this 29th day of August, 2019



Anthony F. Golik
Clark County Prosecuting Attorney